IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTH DAY OF JULY
THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 16622 of 1994

Between:

B. Madhava Rao S/o. Suryanarayana
Mini Milk Cooling Centre, Bhogapuram, Vizianagaram District.

..... PETITIONER

AND

1 Visakhapatnam Co-op Dairy, rep. by its General Manager,
Visakhapatnam-12 Visakhapatnam district.
2 A.P. Dairy Development Federation, rep. by its Managing Director, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, writ or direction, especially one in the nature of writ of mandamus, declaring that the action of the Respondent in seeking recovery of an amount of Rs. 21,047.75 Ps on the basis of show cause notice in No. 81/B2/85 Vol.2 dated 19/21-3-1993 as illegal, arbitrary and discriminatory and is therefore violative of Arts. 14 & 16 of the Constitution of India or else the petitioner would suffer irreparable hardship and injury.

Counsel for the Petitioner : MR.M.SURENDER RAO

Counsel for the Respondent No.1 : Mr. P.B.Vijaya Kumar

Counsel for the respondent No.2 :MR.V.RAJAGOPAL REDDY (SC FOR APDDF)

The Court made the following :

ORAL ORDER :

This writ petition is filed seeking a Writ of Mandamus declaring the action of the respondents in seeking to recover an amount of Rs.21,047-75 ps from the petitioner under the impugned notice dated 19/21-03-1993 as illegal and arbitrary.

The petitioner was working as Assistant Supervisor in Visakhapatnam Cooperative Dairy at Paderu, Visakhapatnam District. Initially the petitioner as well as other similarly situated employees of Visakha Cooperative Dairy were paid the Bad Climate Allowance and other special compensatory allowances on par with Government employees working in unhealthy localities. However in the year 1988 when the Government issued G.O.Ms.No.230, F & P, dated 31-08-1988 discontinuing the said allowances, the petitioner was also disallowed the Bad Climate Allowance. Subsequently, the Government issued G.O.Ms.No.153, dated 10-04-1989 reviving the special allowances and even the arrears for the period from

31-10-1988 to 01-04-1989 were directed to be paid to all the Government employees working in unhealthy localities. In terms thereof, the 2nd respondent Federation passed resolutions dated 26-03-1991 and 27-03-1991 deciding to sanction Bad Climate Allowance to its employees working in the Tribal Development Blocks viz., Seethampeta, Kurupam, Chintapalli, Paderu and Aruku with effect from 01-04-1989. In pursuance thereof, the petitioner and other employees were paid the allowances for some time. However, the 1st respondent vide proceedings dated 06-01-1992 discontinued the special allowances and steps were also initiated for recovery of the amounts paid. Aggrieved by the said action of the respondents, the petitioner along with others filed W.P.No.10700 of 1992. Pending the said writ petition, there was interim stay of recovery. This Court after hearing both sides by order dated 29-12-1992 disposed of the said writ petition leaving it open to the respondents to initiate fresh proceedings after issuing notice to the petitioners. It was also held that till such time no amount shall be recovered from the petitioners. Thereafter, the impugned notice dated 19/21-03-1993 has been issued whereunder the petitioner was intimated that the excess amount of Rs.21,047-75 ps will be collected from his salary after adjusting Rs.1,150/- which was already recovered from him, from March, 1993 in instalments at Rs.600/- per month. Challenging the said order, this writ petition has been filed.

Though Rule Nisi was issued on 03-10-1994, the respondents did not choose to file any counter-affidavit so far.

It is also relevant to note that by virtue of the interim orders granted by this Court the recovery of the amount under the impugned order has been stayed and the same has been in operation throughout. Now, it has been brought to my notice by the learned Counsel for the petitioner that the petitioner has retired from service on 30-09-2003 on attaining the age of superannuation.

As can be seen from the material on record, the contention of the petitioner is that the impugned order dated 19/21-03-1993 though described as a notice in effect it is a final order directing recovery from the salary of the petitioner. It is stated that in spite of the orders of this Court in W.P.No.10700 of 1992 the respondents failed to

issue any notice to the petitioner and thus the impugned proceedings are not only in violation of principles of natural justice but also contrary to the order of this Court. In the absence of any counter-affidavit by the respondents, I do not see any reason to disbelieve the plea of the petitioner that the impugned proceedings were issued without prior notice to him.

In the circumstances, the impugned order dated 19/21-03-1993 is liable to be set aside on the ground that the same was passed without affording any opportunity to the petitioner in terms of the order of this Court in W.P.No.10700 of 1992.

Accordingly, the impugned order dated 19/21-03-1993 is set aside. However, this shall not preclude the respondents to take appropriate steps if they so choose for recovery of the amount in question from the petitioner following due process of law.

The Writ Petition is accordingly disposed of. No costs.

08th July, 2004.

gbs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The General Manager, Visakhapatnam Co-op Dairy,
Visakhapatnam-12 Visakhapatnam district.

2 The Managing Director, A.P. Dairy Development Federation, Hyderabad.

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